IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 628 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.C.PATEL - Appellant(s)
Versus
KISHANLAL RATANLAL & 1 - Opponent(s)

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Appearance :
MR HL JANI for Appellant(s) : 1,
MR RR MARSHALL for Opponent(s) : 1,
None for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/09/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 31.03.1995 passed by the learned Judicial Magistrate, First Class (Municipal), Surat in P.F.A. Case No. 41 of 1993 whereby, the respondent – accused was acquitted from the offences alleged

against him.

2.0 The brief facts of the prosecution case are as under ;

2.1 On 10.12.1990, at around 1000 hrs., the appellant - complainant herein, visited the shop of the respondent and purchased 2 kg. of chilly powder in the presence of 'panchas'. Payment towards the said quantity of stock so purchased was made and receipt to that effect was also obtained from the respondent. Thereafter, copies of the letter stating about the stock so collected and the receipt, both signed by the 'panchas', were given to the respondent. Out of the said stock, a quantity of 600 gms. of chilly powder was sent to the Public Analyst for examination.

2.2 On examination, the said sample was found to be adulterated and, therefore, after following the necessary procedure, a criminal case was registered against the respondent. At the end of trial, the learned .J.M.F.C. (Municipal), Surat acquitted the respondent from the offences alleged against him. Being aggrieved by the impugned judgment and order, the appellant – State has approached this Court by way of this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of

decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

4.0 The trial Court, after considering the entire evidence on

record, has come to the conclusion that the sanctioning authority has not applied its mind while granting permission to the complainant to initiate necessary action against the respondent. The said conclusion has been arrived at on the basis that the complainant was not able to satisfy the Court that the sanctioning authority had granted permission to initiate appropriate action only after proper application of mind. No cogent reasons have been assigned in the said order at Exhibit – 21 passed by the sanctioning authority.

5.0 Apart from that there are major discrepancies in the said order at Exhibit – 21 passed by the sanctioning authority inasmuch as the “Outward Number” and the “Date” narrated in said order were hand-written and no explanation with regard to that has come forward from the complainant. Moreover, the sanctioning authority has not been examined before the trial Court. Therefore, though the sample of chilly powder was found to be adulterated, the trial Court has acquitted the respondent from the offence in question since the statutory authorities had not followed the mandatory requirements as provided under the relevant Act / Rules.

6.0 Considering the facts and circumstances of the case and the evidence discussed hereinabove, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the offences alleged against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in

recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

7.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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